APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,467	09/30/2003	Jeyhan Karaoguz	14278US02	5573

23446   7590   04/10/2008
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EXAMINER
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ART UNIT	PAPER NUMBER
2623	

MAIL DATE	DELIVERY MODE
04/10/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

		Application No.	Applicant(s)
Office Action Summary		10/675,467	KARAOGUZ ET AL.
		Examiner	Art Unit	
		PATRICK A. RYAN	2623	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>21 January 2008</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-31</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-31</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This Office Action is made in response to "Reply to Office Action of September

19, 2007" received January 21, 2008. Applicant has amended Claims 1-31 as of

January 21, 2008. As amended Claims 1-31 are presented for examination.

2.   Applicant has amended Paragraphs [01-02] to replace all Attorney Docket

Numbers with the corresponding US Application Numbers.

3.   Applicant has amended Paragraph [31] to identify "remote PC" as element 105 in

relation to Fig. 1A.

4.   Applicant has amended Paragraph [87] in order to adjust word spacing.

Response to Arguments

5.   Applicant's arguments, see Pages 16-19 of Applicants Reply, filed January 21,

2008, with respect to objections to Information Disclosure Statement and Specification,

have been fully considered and are persuasive.

6.   The Examiner acknowledges Applicant's citation in Paragraph [36] of US Patent

Application No. 10/675382 (previously cited as Attorney Docket No. 14276US02) as

considered related to the instant application and not a prior art reference. Therefore,

the requirement of an Information Disclosure Statement has been withdrawn.

7.   The Examiner acknowledges that the processors stated in Claim 31 are also

stated in Paragraph [87] of the Specification. In addition, the Examiner acknowledges

Applicant intention of using the terms "media peripheral processor", "computer

processor", and "storage system processor" as well known terms in the art of processor

technology. The objection to the Specification for failing to provide proper antecedent

basis for subject matter of Claim 31 has been withdrawn.

8.   Applicant's arguments, see Pages 19-24 of Applicant's Reply, filed January 21,

2008, with respect to the rejection of Claims 1-7, 9-17, 19-27, and 29-31 under 35 USC

102(b) as being anticipated by Novak (US Patent Application Publication No.

2002/0104099) and Claims 8, 18, and 28 under 35 USC 103(a) as being unpatentable

over Novak in view of Eager et al. (US Patent No. 6,868,452) have been fully

considered but they are not persuasive.

9.   In reference to Claim 1, Applicant submits that Novak does not disclose or

suggest, in reference to all steps of Figure 11, the limitation of "wherein said media

channel may be pushed from said first geographic location to a second geographic

location" (Applicant's Reply Page 20). Applicant supports this position by stating that

"Novak discloses that media can be uploaded to a server and a network provider may

communicate the uploaded media to an end user." (Applicant's Reply Page 21).

Applicant further submits that, with reference to Paragraph [69] of Novak, "Novak's

'synthetic channel' acts just like regular television programming [because] an end user

may tune to the programs in the channel and view them like regular television

programming" (Applicant's Reply Page 21). The Examiner respectfully disagrees.

10.   The Examiner submits Paragraph [55] of Applicant's Disclosure to be

representative of Applicant's intended use of the word "Push". In particular, Applicant

states:

> "The media <u>exchange network allows users to effectively become their own broadcasters</u> from
> their own homes by <u>creating their own media channels</u> and <u>pushing those media channels to other</u>
> <u>authorized users</u> on the media exchange network..." (Page 18 Paragraph [55])

In light of the specification, the Examiner interprets Applicant's uses of "channel [that]

may be pushed" to mean providing a path of access through the network (authorized

users) in order to display a list of available media (user created media channels) to a

receiving user in a similar manner to broadcast television (become their own

broadcasters).

        The Examiner disagrees that Novak does not teach a first and second

geographic location. Novak teaches "a first geographic location" in upload source 122

of Fig. 2, which Novak discloses in Paragraph [56] may be an individual or consumer,

and "a second geographic location" in set top box 152, which is also shown in Fig. 2.

        In addition, the Examiner disagrees that Novak does not teach the act of pushing

a media channel from the first geographic location to the second geographic location.

With reference to Fig. 11, Novak teaches pushing a media channel from a first

geographic location in step 1104 to a second geographic location in step 1110. Upload

source 122 provides access to information related to the media objects by way of

interface 702, as Novak disclosed in Paragraphs [78] and [68]. In addition, Novak

discloses that this access may be embodied into pay-per-view methods and treated as

a video-on-demand application, Paragraph [68]. In step 1110, the media channel is

pushed to the second geographic location, wherein the end-user is subscribed to the

media channel and provided access to the EPG 153 of Figure 9, as Novak discloses in

Paragraph [80]. The Examiner notes that EPG 153 contains listings 908, which identify

media programs that upload source 122 created and is now making available to end

users for viewing, as Novak discloses in Paragraph [75].

In view of the above reasoning, the Examiner submits the Novak does teach the

limitation "wherein said media channel may be pushed from said first location to a

second geographic location" as recited in Applicant's Claim 1.

11.   Applicant further submits that Novak does not disclose or suggest the limitation

of "selecting at least one customized media channel established by a user" because

Novak does not present "a schedule which includes personal and/or broadcast media"

and refers to Examiner's citation of step 1116 "Stream Media Program to Client

Terminal of End User" of Figure 11 of Novak for support (Applicant's Reply Page 21).

The Examiner respectfully disagrees.

The Examiner submits that in Novak's Figure 11, the end user is presented with a

schedule, in the form of an electronic program guide (EPG 153 shown in Figure 9), in

step 1112, as described in Paragraph [83] and the media content is presented to the

user in step 1116. As shown in Figure 9, Novak displays both personal media (Joe's TV

Channel 908) and broadcast media (channels of element 902) in EPG 153, as

described in Paragraph [74].

Novak further discloses that "EPG data can include the media program settings

specified by the upload source 122 using the interface 702 of Fig. 7" as described in

Paragraph [83]. It is the Examiners position that Novak's "synthetic channel" is

equivalent to Applicant's "customized media channel" because Novak describes that

media within a synthetic channel, such as "Joe's TV Channel" 908 of Figure 9, "can be

scheduled for replay or repeat..." and "[t]he replay can be scheduled explicitly by the

individual, or done automatically by software of the interface 702" see Paragraph [64].

Therefore, an individual at upload source 122 may customize the media content and

media presentation times in EPG 153, which is presented to the end-user at STB 152.

In view of the above reasoning, the Examiner submits that Novak does teach the

limitation "selecting at least one customized media channel established by a user".

12.   Applicant's arguments regarding the limitations of "selecting at least one

customized media channel established by a user" and "wherein said media channel

may be pushed from said first geographic location to a second geographic location" are

moot in view of new grounds of rejection.

Double Patenting

13.   The nonstatutory double patenting rejection is based on a judicially created

doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

unjustified or improper timewise extension of the "right to exclude" granted by a patent

and to prevent possible harassment by multiple assignees.   A nonstatutory

obviousness-type double patenting rejection is appropriate where the conflicting claims

are not identical, but at least one examined application claim is not patentably distinct

from the reference claim(s) because the examined application claim is either anticipated

by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140

F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29

USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.

1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163

USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d)

may be used to overcome an actual or provisional rejection based on a nonstatutory

double patenting ground provided the conflicting application or patent either is shown to

be commonly owned with this application, or claims an invention made as a result of

activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a

terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with

37 CFR 3.73(b).

14.   Claims 1, 11, and 21 are provisionally rejected on the ground of nonstatutory

obviousness-type double patenting as being unpatentable over claims 1, 11, and 21 of

copending Application No. (10/675904 "application ('904)").

Although the conflicting claims are not identical, they are not patentably distinct

from each other because each application is directed towards a method (Claim 1), an

article of manufacture (Claim 11), and a system (Claim 21) for presenting, scheduling,

and controlling media within a media channel.

In regards to Claim 1, the instant application recites the limitation of "presenting... one or more of media, data, and/or service" as compared to application ('904) reciting the limitation of "presenting... one or both of personal media and/or broadcast media in a media guide". The "presenting media" of the instant application is commensurate in scope to "presenting personal media" and "presenting broadcast media" as recited in application ('904). Both the instant application and application ('904) recite the limitation "media channel may be pushed from [a] first geographic location to a second geographic location". Therefore, both the instant application and application ('904) are directed toward the presentation of a media that is presented by transferring a media channel from one location to another.

In addition, referring to Claim 1, the instant application recites the limitation of "selecting at least one customized media channel..." as compared to application ('904) reciting the limitation of "determining a schedule for presenting... media in [a] media channel". The "selecting" of the instant application is commensurate in scope to the "determining a schedule" as recited in application ('904). Therefore, both the instant application and application ('904) are directed toward the scheduling of a media in a media channel wherein the media channel is to be transferred from one location to another.

Referring again to Claim 1, the instant application recites the limitation of "identifying one or more of media, data, and/or service... for media channel" as compared to application ('904) reciting the limitation of "determining one or both of personal media and/or broadcast media that is to be presented in a media channel".

Therefore, both the instant application and application ('904) are directed toward controlling a media to be included in a media channel wherein the media channel is to be transferred from one location to another.

Based in the above reasoning, Claim 1 of the instant application and Claim 1 of application ('904) contain only obvious variations in the scope of claimed subject matter and are directed toward the same method of presenting, scheduling, and controlling media with in a media channel. In addition, Claims 11 and 21 of both the instant application and application ('904) are directed toward an article of manufacture and a system for implementing the method of Claim 1, therefore the reasoning above is also applied to Claims 11 and 21 of the instant application as compared to Claims 11 and 21 of application ('904). This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

15.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

16.   Claims 1-7, 9-17, 19-27, 29, and 30-31 are rejected under 35 U.S.C 102(e) as

being anticipated by Novak (US Patent Application Publication 2002/0104099),

hereinafter Novak.

17.   In reference to claims 1 and 21, Novak teaches a method of and processor for

programming media content in a distributed media network (using STB 152 executing

the method of Figure 11 as described in Paragraphs 0078-0080), said method and

processor operation comprising: selecting (by way of remote control button 174

described in Paragraph 0073 Lines 7-10) at least one customized media channel

established by a user ("synthetic channel" described in Paragraph 0069 Lines 6-10; as

displayed in EPG 152 during step 1112) based on at least one input from said user;

identifying one or more of media, data and/or service (Figure 5 interface 506 as

described in Paragraph 0061 Lines 5-8) for said selected at least one customized media

channel; and presenting, at a first geographic location (upload source 122, as described

in Paragraph [56]) directly in said at least one customized media channel, said identified

one or more of media, data and/or service (see interface of Figure 7 described in

Paragraphs 0064 Lines 1-10), wherein said media channel may be pushed from said

first geographic location to a second geographic location (step 1104 to step 1110 of

Figure 11, as described in Paragraphs [78]-[80] and with further reference to Paragraph

[75] describing operations of "second location" STB 152).

18.   In reference to claims 2 and 22, Novak teaches a method of and processor for

displaying said identified one or more of media, data and/or service in a channel view

(Figure 9 as described in Paragraph 0074 Lines 1-7) corresponding to said at least one

customized media channel (Figure 9 "Joe's TV Channel" described in Paragraph 0073
Lines 7-13).

19.   In reference to claims 3 and 23, Novak teaches a method of and processor for
scheduling said display of said identified one or more of media, data and/or service (by
way of "time slots" of Figure 7 described in Paragraph 0064 Lines 10-15) in said
channel view corresponding to said at least one customized media channel.

20.   In reference to claims 4 and 24, Novak teaches a method of and processor for
updating (as updated by web site 124 described in Paragraph 0083 Lines 7-12) said
display with newly available one or more of media, data and/or service (as made
available by upload source 122 described in Paragraph 0081) in said channel view
corresponding to said at least one customized media channel.

21.   In reference to claims 5 and 25, Novak teaches a method of and processor for
transferring said identified one or more of media, data and/or service to said at least one
customized media channel (see flow diagram block 408 as described in Paragraph
0060).

22.   In reference to claims 6 and 26, Novak teaches a method of and processor for
selecting said identified one or more of media, data and/or service from a third party
(shown as upload source 222 referenced in Paragraph 0043).

23.   In reference to claims 7 and 27, Novak teaches a method of and processor for
transferring (from upload source 222 as described in Paragraph 0043 Lines 1-3) said
selected one or more of media, data and service from a storage associated with said
third party (web site 224 server as described in Paragraph 0043 Lines 3-4) into said at

least one customized media channel (a method of "uploading" is described in Paragraph 0062 Lines 1-8).

24.   In reference to claims 9 and 29, Novak teaches a method of and processor for receiving said selection of said identified one or more of media, data and service (at STB 152 as described in Paragraph 0028 Lines 3-7) based on one or both of a device view (interface 506 described in Paragraph 0061 Lines 4-13) and/or a media view (interface 702 as described in Paragraph 0063 Lines 7-16).

25.   In reference to claims 10 and 30, Novak teaches a method of and processor for controlling said presentation of said identified one or more of media, data and/or service from a graphical user interface corresponding to a channel view (see EPG 802 "controlling" aspects as described in Paragraph 0071).

26.   In reference to claims 11-17 and 19-20, Novak teaches a machine-readable storage (described in Paragraph 0077 Lines 1-10) having stored thereon, a computer program having at least one code section for programming media content in a distributed media network (using "token" program described in Paragraph 0058 Lines 1-10), the at least one code section being executable by a machine (STB 152 described in Paragraph 0077 Lines 10-14) for causing the machine to perform the method of claims 1 through 10, as rejected above.

27.   In reference to claim 21, Novak teaches a system for programming media content in a distributed media network (shown in Figure 3 described in Paragraph 0045).

28.   In reference to claim 31, Novak teaches a processor that is a media processing

system processor (Paragraph 0085 describing the STB 152 executing flow diagram

block 1114).

Claim Rejections - 35 USC § 103

29.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

30.   Claims 8, 18, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Novak (US Patent Application Publication 2002/0104099) in view of Eager et al.

(6,868,452) herein referred to as Eager.

Novak does not disclose a method of queuing prior to the transfer of media

content based on bandwidth usage, delivery cost, or delivery schedule.

Eager discloses a method of improving delivery of continuous media programs

by using a remote server to store portions of the program that cannot be immediately

transmitted to the end-user. The server transmits the media programs based on the

costs of storing (Col 5 Line 4), the cost of bandwidth (Col 5 Line 5), and delivery period

(Col 9 Lines 15-19).

Eager discloses the desirability to reduce bandwidth costs and loads on the

server associated with the storage and transmission of streaming data (Col 5 Lines 17-

23). In addition, Eager further discloses the advantage of reduced delivery costs

created by using a regional server cache as a media storage device. It would be advantageous to combine the system of Novak with the server of Eager due the increase in control and regulation of streaming media in the network. In addition, the use of the server of Eager would reduce the operating cost of Novak's network, and therefore the combination of the server into the network would make the network more cost effective.

In light of Eager, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the server disclosed by Eager in the media network system disclosed by Novak in order to queue data based on bandwidth usage, delivery cost, of delivery schedule.

Conclusion

31.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PATRICK A. RYAN whose telephone number is (571)270-5086. The examiner can normally be reached on Mon to Thur, 8:00am - 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Beliveau can be reached on (571) 272-7343. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. A. R./
Examiner, Art Unit 2623
Thursday, April 10, 2008

/Scott Beliveau/
Supervisory Patent Examiner, Art Unit 2623